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THE HON. MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON, SEATTLE

OMNI INNOVATIONS, LLC, a Washington Limited Liability company; **Plaintiff,** v. **eFinancial, Inc. and JOHN DOES, I-X,** **Defendants,**	**NO.** CV06-01118 **DECLARATION OF JAMES S. GORDON, JR. IN REPLY RE PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT FOR INJUNCTIVE RELIEF**

1. I, James S. Gordon, Jr., am the Plaintiff in the above captioned lawsuit. I am over the age of 18, of sound mind, and am otherwise competent to testify.
2. Regarding Defendants' allegation that some of the domains I identified as having received their commercial email are not owned by, or registered to me, that is true.

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However, all of the identified domains are hosted by Omni on its server as part of its operation as an "interactive computer service" ("IAS"). These emails do, in fact, come to me (received by Omni's server), and are then passed along to the actual recipient whose email account Omni hosts.

3. Attached hereto as **Exhibit "A"** is a copy of the most recent spam sent June 5, 2007 received from or on behalf of Defendants. I clicked on the hyperlink in the email and my browser opened to the eFinancial website, (See a copy of eFinancial's website attached hereto as **Exhibit "B"**) On that basis I believe that Defendants or their agents are responsible for sending the email.

4. By way of further explanation as to why Defendants are wrong when they claim that we cannot "trace" their spam to them, Defendant is using a form of co-op advertising. The emails contain hyperlinks to websites such that when the email is viewed the html-enabled browser automatically imports graphics from a remote server. In that manner, whoever controls the server can continuously rotate and display whatever ad copy it desires by changing the images associated with those links. The fact that their web page is displayed when one clicks on the graphics in the spam email demonstrates conclusively that, at a minimum, they are acting in consort the sender of the email.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

EXECUTED this 10th day of July, 2007

/s/ James S. Gordon, Jr.
James S. Gordon, Jr.

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Certificate of Service

I, hereby, certify that on July 11th, 2007, I filed this affidavit with this Court via approved electronic filing, and served the following:
Attorneys for Defendants: Matthew Wojick,

/s/ Robert J. Siegel ____
Robert J. Siegel

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